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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,235	03/03/2004	Eve Gambla		4672

7590  
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02/19/2008

EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

02/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/792,235

**Applicant(s)**

GAMBLA ET AL.

**Examiner**

Robert M. Metsuga

**Art Unit**

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. It is noted claims 5 and 6 (submitted 12/17/07) do not comply with 37 CFR 1.121. Claim 5 is in the same form as the version amended 07/11/2007 and therefore should be identified as "previously presented", or equivalent. Claim 6 was canceled 01/26/2007. Applicant must submit a correct copy of claims in responding to this Office action.
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "horizontal" feature set forth in claim 4 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3751

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Masters et al.

The Masters et al. (Masters) reference discloses a spray shield comprising: a wall 101; a flange 113; and a domed top (illustrated), as claimed. Re claim 1, the wall height appears to be within the recited range (Fig. 4). Re claim 4, the flange 113 would be horizontal when the shield is mounted on a horizontal toilet bowl rim (col. 3 lns. 54-57). Furthermore, the flange 113 is integral (col. 2 lns. 25-27). Re claim 7, the wall extension appears to be within the recited range (col. 2 lns. 15-17).

Applicant argues at pages 7-8 (and again at page 9) of the response filed December 17, 2007 the flange of the Masters spray shield is structurally and functionally different from the flange of the instant invention. The examiner disagrees. The flange of Masters and that of applicant's claimed invention are identical. This is evident from a comparison of Fig. 1 in Masters with Fig. 1 of the instant application. Furthermore,

note Masters at column 3, lines 47-48, and in the paragraph bridging columns 3 and 4.

5. Claims 1, 2, 4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masters and Gambla et al.

Re claims 1 and 7, the choice of proportions would appear obvious choices to be made to the extent they are not already disclosed by Masters.

Re claim 8, although the wall of the Masters spray shield does not include an image, as claimed, attention is directed to the Gambla et al. (Gambla) reference which discloses an analogous spray shield which further includes a wall 124 having an image 120. Therefore, in consideration of Gambla, it would have been obvious to one of ordinary skill in the spray shield art to associate an image with the Masters wall in order to provide entertainment. Furthermore, the choice of image type would appear an obvious choice to be made.

6. Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masters alone, or taken with Gambla, as applied to claim 1 above, and further in view of Whitman.

Although the wall of the Masters spray shield does not include a handle, as claimed, attention is directed to the Whitman reference which discloses an analogous spray shield which further includes a wall 24 having a handle 48. Therefore,

Art Unit: 3751

in consideration of Whitman, it would have been obvious to one of ordinary skill in the spray shield art to associate a handle with the Masters wall in order to facilitate manipulation.

7. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

8. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/  
Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751